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[Additional Counsel identified on signature
pages]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re GOOGLE DIGITAL PUBLISHER
ANTITRUST LITIGATION

No. 5:20-cv-08984-BLF

**NOTICE REGARDING PUBLISHER
PLAINTIFFS' MOTION FOR
APPOINTMENT OF INTERIM CO-
LEAD PUBLISHER CLASS COUNSEL
PURSUANT TO FED. R. CIV. P.
23(g)(3)**

Courtroom: 3, 5th Floor, San Jose
Judge: Hon. Beth Labson Freeman

Plaintiffs Genius Media Group, Inc., Sterling International Consulting Group, The Nation Company, L.P., The Progressive, Inc., Sweepstakes Today, LLC, JLaSalle Enterprises LLC, and Mikula Web Solutions, Inc. (collectively, "Publisher Plaintiffs") respectfully file this notice in connection with Publisher Plaintiffs' Motion for Appointment of Interim Co-Lead Publisher Class Counsel Pursuant to Fed. R. Civ. P. 23(g)(3) (filed at Case No. 20-cv-3556-BLF, ECF No. 101) (the "Co-Lead Motion").

Publisher Plaintiffs attach hereto a proposed order appointing Boies Schiller Flexner LLP ("BSF"), Korein Tillery LLC ("KT"), and Berger Montague PC ("Berger Montague") Interim Co-Lead Publisher Class Counsel and appointing Kirby McInerney LLP and Gustafson Gluek PLLC to serve along with Interim Co-Lead Publisher Class Counsel as members of the Publisher Class Leadership Committee. The proposed order has been revised to address the issues raised by the Court at the March 12, 2021 hearing. In addition, Publisher Plaintiffs provide the following additional information about the identity and roles of the highly-skilled attorneys for the proposed Interim Co-Lead Publisher Class Counsel who will be taking the lead on this case.

Boies Schiller Flexner

The principal BSF team for this matter will be Philip Korologos, Abby L. Dennis, Mark Mao, and Sean Rodriguez.

1 **Philip Korologos** will lead BSF’s team as first chair and will be involved in all facets of
2 the case including case strategy and management, legal and antitrust theories, expert work,
3 discovery, settlement discussions, motion practice, merits briefing, and trial. In addition, Mr.
4 Korologos will serve as principal liaison to the Court and other class and defense counsel—a role
5 he has played for the Publisher Plaintiffs thus far. In addition to his extensive antitrust, class
6 action, and complex litigation experience as further noted in the Co-Lead Motion (including, *e.g.*,
7 a complete defense of American Express in *Ohio v. American Express* and a record-setting
8 settlement for the class in *In re Auction Houses* (with Mr. Boies)), Mr. Korologos has been
9 involved in investigating and evaluating publisher claims since June of 2020 including extensive
10 work on drafting the complaint filed by the Genius Media plaintiffs.

11 **Abby L. Dennis** will second chair BSF’s team and will be involved in all facets of the case
12 including case strategy and management, legal and antitrust theories, expert work, discovery,
13 settlement discussions, motion practice, merits briefing, and trial. Ms. Dennis brings experience
14 in a variety of high-profile antitrust cases on both the plaintiff and defense side including currently
15 representing United HealthCare Services as a plaintiff in *In re Generics Pharmaceuticals Pricing*
16 *Antitrust Litigation* (E.D. Pa.), *In re Xyrem (Sodium Oxybate) Antitrust Litigation* (N.D. Cal.), *In*
17 *re Zetia (Ezetimibe) Antitrust Litigation* (E.D. Va.), and Delta Air Lines as a defendant in *In re*
18 *Domestic Airline Travel Antitrust Litigation* (D.D.C), among others. Ms. Dennis since May of
19 2020 has helped develop the antitrust theories and draft the *Genius Media* complaint.

20 **Mark Mao** is a preeminent data privacy and technology lawyer with significant technical
21 understanding of the ad tech stack and Google’s business in particular. Mr. Mao will continue to
22 lead BSF’s efforts on the factual development of the proposed publisher class’s claims. Mr. Mao
23 leads BSF’s efforts in a variety of actions against Google relating to data privacy and technology
24 issues, including class actions (*e.g.*, *Brown et al. v. Google* (data collection practices in private
25 browsing mode) (N.D. Cal.); *Rodriguez et al. v. Google* (data collection on mobile devices when
26 users have turned off “Web & App Activity”) (N.D. Cal.). Mr. Mao’s technical understanding of
27 the online display advertising marketplace has been instrumental in identifying and assessing
28 potential claims against Google including those asserted in the *Genius Media* complaint. Mr. Mao

1 has liaised with and assisted numerous antitrust regulators in their investigations into Google's
2 conduct. Mr. Mao together with Mr. Rodriguez has been evaluating and developing the factual
3 and legal theories for pursuit of the *Genius Media* claims since October 2019.

4 **Sean Rodriguez** will continue to focus his efforts on the legal and antitrust theories and
5 working with the proposed publisher class's experts in the prosecution of the claims asserted in the
6 consolidated complaint. Mr. Rodriguez has focused his work at BSF on antitrust matters
7 including his extensive work on the defense in *Ohio v. American Express* (as an associate with Mr.
8 Korologos). Mr. Rodriguez also works with Mr. Mao in leading the Firm's work concerning
9 Google on privacy and technology disputes and successfully represented hundreds of thousands of
10 *au pairs* in wage-fixing class action that resulted in 2019 in one of the largest wage recoveries in
11 several years. Mr. Rodriguez helped develop the antitrust theories and draft the *Genius Media*
12 complaint and has liaised with and assisted numerous antitrust regulators in their investigations
13 into Google's conduct. He has been investigating claims such as those brought against Genius
14 Media for over a year and a half.

15 ***Korein Tillery***

16 The principal KT litigators for this action will include Carol O'Keefe, George Zelcs, and
17 Robert Litan.

18 **Carol O'Keefe** has been actively involved in this litigation since May 2020 when she
19 worked with Robert Litan to investigate the ad tech space, develop pertinent antitrust theories, and
20 begin drafting a publisher-focused complaint. Ms. O'Keefe will handle daily case oversight
21 including internal delegation of tasks, and will have primary responsibility for drafting and editing
22 briefs and motions. She will also coordinate and participate in discovery, including depositions
23 and second-level document review, will work with technical and economic experts, and will
24 participate in motion practice and trial. Ms. O'Keefe has both a history of antitrust experience and
25 substantial experience in the investigation and factual development of technology-based claims.
26 She is currently playing an instrumental role in developing the claims of the proposed consumer
27 class in *In re Google Play Consumer Antitrust Litigation*, where she is working directly with lead
28 counsel to develop antitrust theories in the context of the Android operating system and Google

1 Play store.

2 **Robert Litan** brings his unique expertise as both an economist and a lawyer to bear on the
3 development of legal theories and economic analyses. Mr. Litan has an extensive background in
4 economics and antitrust law, both as a testifying expert in numerous legal and administrative
5 proceedings, and as a lawyer working with economic experts and overseeing major DOJ antitrust
6 prosecutions. Mr. Litan will work with co-counsel on overall legal and economic strategy, and
7 will work with proposed publisher class's economic experts to develop and explain pertinent
8 antitrust theories and to rebut arguments advanced by Defendants' experts, a role he currently
9 plays in *In re Google Play Consumer Antitrust Litigation* and has been playing throughout the *In*
10 *re Foreign Exchange Benchmark Litigation*. Mr. Litan will also work on discovery tasks,
11 including discovery demands and subpoenas, and expert deposition preparation.

12 **George Zelcs** will bring his extensive experience in complex multi-party litigation,
13 including his experience as both co-lead counsel in *Litovich v. Bank of America Corporation* and
14 as a member of the steering committee in *In re Google Play Consumer Antitrust Litigation* to
15 serve the proposed publisher class. Mr. Zelcs will contribute to strategy, legal theory, and
16 settlement discussions, will supervise expenses and the use of KT's resources, including its in-
17 house discovery hosting platform. Mr. Zelcs will also lead KT's efforts on fact development,
18 including reaching out to witnesses and potential experts, and tasking legal analyst investigations.
19 He will aid in the vetting of experts and the preparation of witnesses for deposition and testimony,
20 and will review and edit briefing related to substantive motions, discovery motions, and class
21 certification.

22 ***Berger Montague***

23 The primary litigation team for Berger Montague shall consist of Caitlin G. Coslett, Eric L.
24 Cramer, and Patrick F. Madden.

25 **Caitlin G. Coslett** will run the day-to-day oversight of the case on behalf of Berger
26 Montague, work directly with other Interim Co-Lead Publisher Class Counsel for publishers (and
27 the members of the Publisher Class Leadership Committee) and any interim lead or co-lead
28 counsel for advertisers as appropriate, make court appearances, participate in brief drafting and

1 motion practice, and oversee and participate in factual and expert discovery, including depositions,
2 and oversee trial preparations. Ms. Coslett is a Co-Chair of the firm's Antitrust Department and has
3 a national practice in the field of complex litigation primarily focused on antitrust litigation. She has
4 a substantial track record of significant successes for the classes she represents. For example, she
5 served as class counsel in *In re Lidoderm Antitrust Litig.*, No. 14-MD-2521 (N.D. Cal.), in which the
6 direct purchaser class settled for \$166 million, and as co-lead counsel in *In re Solodyn (Minocycline*
7 *Hydrochloride) Antitrust Litig.*, No. 1:14-md-2503 (D. Mass.), where Ms. Coslett achieved a
8 settlement of over \$70 million in 2017.

9 **Eric L. Cramer** will participate in legal and economic strategy discussions, including
10 among Interim Co-Lead Publisher Class Counsel and, as appropriate, any interim lead or co-lead
11 counsel for advertisers, work on discovery and briefing relating, in particular, to class certification
12 and expert analysis and discovery, and will participate in trial preparations and trial. Mr. Cramer
13 is Berger Montague's Chairman and Co-Chair of its Antitrust Department. He has prosecuted
14 multiple complex antitrust matters, with a focus on monopolization claims. He was co-lead counsel
15 in a Section 2 case relating to the over-the-road fleet payment card market in *Comdata*, which
16 provided for \$130 million in cash plus valuable prospective relief that rolled back much of the
17 conduct plaintiffs had challenged. He also litigated as co-lead counsel a monopolization class action
18 against Sanofi Pasteur, which settled for \$61.5 million (*Castro v. Sanofi Pasteur, Inc.*, No. 11-cv-
19 7178 (D.N.J.)), and another against Abbott Labs, which settled for \$54 million after three days of
20 trial before Judge Wilken. *Meijer v. Abbott Labs.*, Nos. 04-cv-1511, 07-cv-5985 (N.D. Cal.). Mr.
21 Cramer, along with Mr. Dell'Angelo and Mr. Madden, have counseled large sophisticated publishers
22 in assessing potential claims against technology companies relating to the ad tech stack and display
23 advertising, and will bring that experience to bear on behalf of the proposed publisher class here.

24 **Patrick F. Madden** will participate in development of legal and factual theories, *inter*
25 *alia*, through oversight and participation in discovery (including, without limitation, depositions
26 and expert discovery) and in working with the firm's client(s), and will participate in brief drafting
27 and motion practice. Mr. Madden has a national practice focusing on antitrust and consumer class
28 action litigation and has spearheaded multiple investigations into the conduct of technology

1 companies relating to the ad tech stack and display advertising, including many months of work
2 relating to developing this case.

3 * * *

4 The co-lead interim counsel firms will utilize the resources of their respective firms as
5 needed to prosecute the proposed publisher class's claims, including:

6 **Boies Schiller Flexner:** BSF expects to draw significantly on the extensive antitrust,
7 economic analysis, and trial experience of **David Boies**, just as we have in the development of the
8 *Genius Media* claims, including with respect to dispositive or other significant motion practice,
9 and key depositions. Also, BSF expects to draw on **Sabria McElroy**'s experience as a complex
10 commercial litigator including to assist as needed in discovery and fact development and
11 continued management of relations with Genius Media, by far the largest of the currently named
12 Publisher Plaintiffs. **Brianna Hills**, an associate, will also support the BSF team.

13 **Korein Tillery: Randall Ewing, Jr.** will work on behalf of the proposed publisher class
14 in connection with discovery and motion practice, including class certification, bringing to bear
15 his key roles in *In re Foreign Exchange Benchmark Antitrust Litigation*, *In re GSE Bonds*
16 *Antitrust Litigation*, and *In re ICE Libor Antitrust Litigation*. **Ryan Cortazar**, an associate, will
17 also support the KT team.

18 **Berger Montague: Michael Dell'Angelo**, who has a substantial track record of achieving
19 outstanding recoveries, will work on discovery tasks (including, without limitation, depositions),
20 assist in brief drafting and motion practice, and in working with the firm's client(s). Associate
21 **Sophia Rios**, who was named one of the "Top 40 Under 40 Business Professionals" by the *San*
22 *Diego Daily Transcript* in 2020, in part for her leadership on diversity in the legal field, will assist
23 with legal research, document review, deposition preparation, and drafting of motions.

24 In addition, within each co-lead interim firm, legal analysts, paralegals and support staff
25 shall perform additional work as needed, including legal and factual research, document review,
26 deposition preparation, and administrative tasks.

27 * * *

Assisting Interim Co-Lead Publisher Class Counsel will be two additional members of the Publisher Leadership Committee—Kirby McInerney, LLP and Gustafson Gluek PLLC—who will work at the direction of Interim Co-Lead Publisher Class Counsel, chiefly regarding factual discovery. Robert J. Gralewski, Jr. will serve as the lead lawyer for Kirby McInerney LLP, while Daniel Nordin will lead Gustafson Gluek’s efforts. Their experience and qualifications were summarized in the Co-Lead Motion.

* * *

For the reasons set forth in the prior briefing and at the hearing in connection with Publisher Plaintiffs' Motion for Appointment of Interim Co-Lead Publisher Class Counsel Pursuant to Fed. R. Civ. P. 23(g)(3), Publisher Plaintiffs respectfully request that the Court enter the attached proposed order appointing BSF, Korein Tillery, and Berger Montague Interim Co-Lead Publisher Class Counsel, and appointing Kirby McInerney LLP and Gustafson Gluek PLLC to serve along with Interim Co-Lead Publisher Class Counsel as members of the Publisher Class Leadership Committee. Publisher Plaintiffs are available to provide any additional information the Court may request.

Dated: April 12, 2021

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By: /s/ Philip C. Korologos

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7 **Pro Hac Vice*

8 *** Pro Hac Vice pending*

1 **FILER'S ATTESTATION**

2 Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Philip C. Korologos attest that
3 concurrence in the filing of:

4 **NOTICE REGARDING PUBLISHER PLAINTIFFS' MOTION FOR**
5 **APPOINTMENT OF INTERIM CO-LEAD PUBLISHER CLASS COUNSEL**
6 **PURSUANT TO FED. R. CIV. P. 23(g)(3)**

7 has been obtained from each of the other signatories.

8 Dated: April 12, 2021

/s/ Philip C. Korologos
Philip C. Korologos